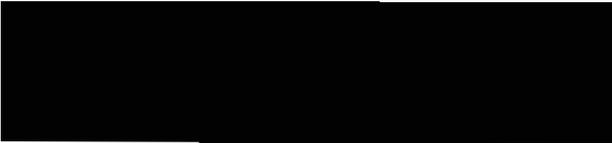




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



Lu

FILE: [REDACTED] Office: NEW YORK Date: **APR 25 2008**  
MSC 02 020 61911

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

Section 1104(c)(2)(B) of the LIFE Act states:

- (i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also states that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-*

*Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence, or if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

While there is no specific regulation that governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements that affidavits are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information that an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. *See* 8 C.F.R. § 245a.2(d)(3)(v).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

Here, the submitted evidence is not sufficiently relevant, probative, and credible.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through May 4, 1988, the applicant provided the following evidence:

- A letter, dated January 4, 1990, from a [redacted] of A. A. Construction Co., Brooklyn, New York, stating that the applicant was permanently employed at a salary of \$250.00 per week from December 1981 to January 27, 1983. The letter is not notarized, does not satisfy the requirements of 8 C.F.R. § 245a.2(d)(3)(i), and contains erasures regarding the dates of employment that call into question its credibility.
- A letter, dated March 16, 1990, from M.G. Contracting Co., Brooklyn, New York, stating that the applicant was employed from January 1985 to September 19, 1987. Again, the letter is not notarized, does not satisfy the requirements of 8 C.F.R. §

245a.2(d)(3)(i), and contains erasures regarding the dates of employment that call into question its credibility.

- Three affidavits from ██████████, Bakersfield, California. In an affidavit dated August 17, 1990, ██████████ states that the applicant resided at his residence at the cost of \$100 per month since October 1989. In an affidavit dated August 19, 1990, Mr. ██████████ states that he has known the applicant since 1981 and that the applicant traveled to Pakistan from August 20, 1987 to September 15, 1987. In an affidavit dated August 20, 1990, ██████████ states that he and the applicant shared living quarters in Brooklyn, New York, from December 1981 to March 1985. While not required, the affidavits are not accompanied by proof of identification or any evidence of ██████████'s residence during the relevant periods and otherwise lack details that would lend credibility to his statements. As such, the statements can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
- Envelopes addressed to the applicant in Brooklyn, New York, postmarked in 1986.

In a Notice of Intent to Deny (NOID), dated May 4, 2006, the district director determined that the applicant had failed to establish by a preponderance of the evidence that he had established unlawful residence in the United States from prior to January 1, 1982. The director granted the applicant 30 days to submit additional evidence. In response, counsel provided the following documentation:

- An envelope addressed to the applicant in Brooklyn, New York, postmarked May 11, 1987.
- An affidavit, dated May 26, 2006, from ██████████, Brooklyn, New York, stating that he had known the applicant since 1985 and that the applicant departed the United States by air from JFK airport, New York, for one month in September 1987 in order to visit his (the applicant's) sick father. While not required, the affidavit is not accompanied by proof of identification or any evidence of the affiant's residence during the relevant period; does not indicate his relationship with the applicant, how he dates his acquaintance with the applicant, or how often and under what circumstances he had contact with the applicant during the requisite period; and otherwise lacks any details that would lend credibility to an alleged 21-year relationship with the applicant. It is unclear as to what basis the affiant claims to have direct and personal knowledge of the events and circumstances of the applicant's residence in the United States. As such, the statement can be afforded minimal weight as evidence of the applicant's residence and presence in the United States for the requisite period.
- A photocopy of a letter, dated October 10, 1987, from ██████████, President of the United American Muslim Association of New York, stating that the applicant had belonged to the organization since October 1, 1981 – regularly participating in prayers

and other religious ceremonies on Fridays and other occasions.

In a Notice of Decision (NOD), dated June 6, 2006, the district director denied the application based on the reasons stated in the NOID. The district director noted in the decision that the Service had reviewed public records and found the starting date of the United American Muslim Association of New York and the applicant's claimed patronage differed greatly, thereby lacking credibility and probative value.

The applicant filed a timely appeal from the district director's decision on July 3, 2006. On appeal, counsel asserts that the documentation previously provided by the applicant is both credible and amenable to verification, but does not address the issue previously discussed regarding the United American Muslim Association of New York. In support of the appeal, counsel provides the following additional documentation:

- An affidavit, dated June 29, 2006, from [REDACTED] Jersey City, New Jersey, stating that he met the applicant at a friend's birthday party in 1981 and that they have been good friends since that time.
- An affidavit, dated June 30, 2006, from [REDACTED] Jersey City, New Jersey, stating that he had known the applicant since March 1983 and since then they have met each other on different occasions. Mr. [REDACTED] further states that the applicant left the United States in August 1987 to visit his sick father, and returned in September 1987.

These affidavits suffer from the same deficiencies as those discussed above. They are not accompanied by documentation identifying the affiant's and there is no evidence that the affiants actually resided in the United States during the requisite periods. Like the other affiants, they did not state with any detail how they first met the applicant, what their relationship(s) with the applicant are, or how frequently and under what circumstances they saw the applicant during the requisite periods. The affidavits are devoid of details that would lend credibility to the claimed relationships and provide no basis for concluding that the affiants actually had direct and personal knowledge of the events and circumstances of the applicant's residence in the US during the requisite periods.

Upon review of all the evidence in the record, the AAO determines that the submitted evidence is not sufficiently relevant, probative, and credible to meet the applicant's burden of proof.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through March 4, 1988.

The regulation at 8 C.F.R. § 245a.12(e) provides that “[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods.” Preponderance of the evidence is defined as “evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5<sup>th</sup> ed. 1979). *See Matter of Lemhammad*, 20 I&N Dec. 316, 320, Note 5 (BIA 1991).

Due to the insufficiencies and discrepancies in the documentation provided, as noted above, the AAO determines that the applicant has not met his burden of proof. The applicant has not established, by a preponderance of the evidence, that he entered the United States before January 1, 1982, and resided in this country in an unlawful status continuously since that time through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). Given this, he is ineligible for permanent resident status under section 1104 of the LIFE Act.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.